



STATE OF WASHINGTON

DEPARTMENT OF HEALTH

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To Whom It May Concern,

The Department of Health (department) has adopted a new section, WAC 246-310-825 Kidney disease treatment centers— Temporary emergency situation exemption, and has adopted amendments to existing kidney disease treatment center rules, WAC 246-310-800 through 246-310-806 and 246-310-812 through 246-310-833, to implement Substitute Senate Bill (SSB) 5569 (chapter 48, Laws of 2023), codified in RCW 70.38.280. The department has also adopted amendments to address impacts to the need methodology based upon the new temporary emergency situation exemption, as well as language clean-up to ensure consistency in kidney disease treatment center rules. These rules are intended to implement SSB 5569 and allow flexibility for kidney disease treatment centers to ensure dialysis patients can receive needed healthcare services during a temporary emergency situation.

The adopted amendments will become effective on August 10, 2024. A copy of the adopted rules is attached.

The following is a summary of all the comments received since filing the CR-102 and the department's response regarding the proposed rule.

1. General Comments

The department received a comment to change the word "Facility" to "center" throughout the chapter. The comment states that while the titles have been changed, the rules continue to use "facility" throughout and suggest making the universal change for consistency.

Department Response: References to "facility" in WAC 246-310-800 through 246-310-806 and 246-310-812 through 246-310-833 have been changed to "center" for consistency.

2. WAC 246-310-800 Kidney disease treatment centers – Definitions

The department received a verbal and a written comment that requests the department include "or successor organization" to the definition of "Network" to allow continuity of service provider in the event of a change in responsibility or reorganization from ESRD Network 16 to another organization or name.

Department response: The department prefers not to use terms like “successor organization” in rules because it does not allow the department an initial review to determine if a successor organization is appropriate for the role before being authorized under the rule. If a successor organization does take over ESRD Network 16, the department will engage with the successor organization, determine if they fulfill necessary requirements, and then proceed with updating rule language.

3. WAC 246-310-818(14)(b)-(c) Special circumstances one-or two-station expansion—Eligibility criteria and application process

1. WAC 246-310-818(14)(b)

The department received a comment regarding WAC 246-310-818(14)(b), which provides that only facilities approved for a staffing shortage related temporary emergency situation exemption are eligible to apply for special circumstances, while facilities operating temporary emergency stations for reasons other than staffing shortage are not eligible for special circumstance stations.

The comment expressed concern regarding prohibiting facilities experiencing temporary emergency situations other than those caused by a staffing shortage from applying for special circumstances. The comment also stated that if “a facility is rendered unusable by an event such as a fire and other nearby providers add temporary emergency stations to serve the displaced patients, [facility] wants the providers to still be eligible to add stations under the Special Circumstances rules if all requirements are met. The details of how the calculations will be made needs to be considered.”

2. WAC 246-310-818(14)(c)

The department received comments regarding WAC 246-310-818(14)(c), which specifies how a patient census will be conducted for facilities experiencing a staffing shortage temporary emergency situation. One concern shared was regarding the risk of inaccurate data reported to ESRD Network 16. Comments requested that facilities should be eligible to add special circumstance stations if all requirements are met, not only in the case of a staffing shortage temporary emergency situation. Commentors requested the department to remove language from both subsections that limit special circumstances for those with a staffing shortage related temporary emergency exemption.

Department Response: The department determined that dialysis centers who experienced a temporary emergency situation within the preceding six months, other than those caused by a staffing emergency, should not be eligible for special circumstance stations because they will not have sufficient time to makes special circumstance stations operational. WAC 246-310-818(10) requires that centers awarded special circumstance stations must have them operational in six months.

4. WAC 246-310-825 Kidney disease treatment centers—Temporary emergency situation exemption.

The department received comments regarding new subsection, WAC 246-310-825, which provides eligibility requirements for applying for a temporary emergency situation exemption.

Comments requested that the department reinstate two prior subsections that were included in workshop drafts. One subsection required the department to issue a decision within 3 working days of

receipt of a facility's complete written request for a temporary emergency station. Comments acknowledged that "3 working days" may not be feasible, however, there were concerns that removing a subsection and language dedicated to "reasonable efforts" for the department to issue an exemption is not flexible to facilities seeking a temporary emergency exemption.

The other proposed subsection would have required the department to publish on its website all written requests and department decisions related to kidney disease treatment center temporary emergency situations. Public and written comments shared that having temporary emergency information publicly posted to the department's website would provide a central, transparent source of information for all stakeholders. One comment shared a concern that without this proposed subsection, there is risk of costly litigation if information is siloed and not readily available. Verbal and written comments have requested that the department re-insert the proposed subsection. One comment regarding this section also requested the department to add a notification requirement for when a temporary exemption ends.

Department Response: The department intends to issue decisions within 3 working days of receipt of a facility's written request for a temporary emergency situation exemption, as well as post all written requests and decisions related to temporary emergency situation exemption requests on its website. The department may determine it is appropriate to establish an internal procedure regarding temporary emergency situation exemption requests. Agency procedures that do not impact qualification standards are not placed in rule. See RCW 34.05.010(16).

Any person may petition the adoption or amendment of these rules in accordance with RCW 34.05.330.

For more information regarding these rules you may contact ross.valore@doh.wa.gov

Cordially,

Ross Valore,
Executive Director